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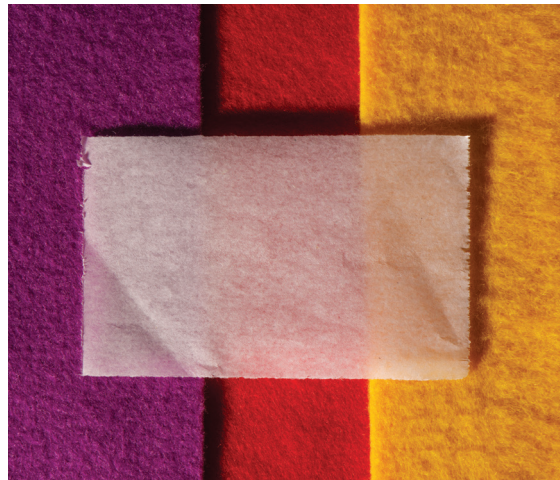
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PA-X REPORT: POWER-SHARING SERIES



Territorial Power-sharing and Inclusion in Peace Processes

Laura Wise



This research draws on the PA-X Peace Agreement Database (www.peaceagreements.org), a database of all peace agreements at any stage of the peace process from 1990 to 2016. The database is fully searchable and supports both qualitative and quantitative examination of peace agreements.

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Executive Summary

Territorial power sharing can be understood as the sharing and delegation of the central government's powers and responsibilities to geographical units. It can include restructuring from a centralised to a federal state, or moving decision-making power from a central government to regional or local governments. It can also include delegation of forms of political, fiscal, or administrative self-governance to regional or local groups who make claims to govern a particular area of territory.

This research report provides information and analysis on when and how peace agreements provide for territorial power-sharing, and the implications for broader projects of social inclusion. It forms one of a series of reports drawing on the new PA-X Peace Agreement Database, on power-sharing in peace processes. Other reports address political power-sharing, economic power-sharing, and military power-sharing, and a related gender briefing series draws out implications of power-sharing for women.

Territorial power-sharing is often used in peace processes, to accommodate the competing interests of conflict parties to territorial control, including competing claims to unitary statehood and to secession. Like other forms of power-sharing it can offer greater inclusion in the form of self-government for groups who have been contesting the state's marginalization of them. However, territorial power-sharing can in turn cause other forms of inclusion and exclusion which require to be anticipated and addressed.

- Territorial power-sharing in peace agreements includes federal or similar sub-divided forms of government, local or municipal government, autonomy, and other forms of 'special status'.

Most peace agreements that provide for territorial power-sharing do not provide clearly for one form or the other. Different elements of all these forms of territorial sub-division are often combined in creative and multi-layered permutations. This suggests that granting autonomy to ethno-national groups is more likely to be part of a complex package of decentralizing powers to a variety of sub-state entities.

- During negotiations on territorial power-sharing, there are critical decisions that have implications for the type of inclusion on offer.

Decisions over how territory will be split, internal demarcation processes, institutional frameworks, dispute resolution, division of responsibilities, articulations of the nature of the state, and anticipating newly created 'minority-majority' dynamics, can all have implications for inclusion and exclusion of different groups across various levels of governance. Reflection on these decisions may create space in negotiations to anticipate possible inclusion dilemmas, and creative ways to manage exclusive outcomes which may contribute to future conflict.

- Territorial power-sharing arrangements have been reached mostly during peace processes relating to intrastate, identity-based conflicts across a variety of geographical contexts, including secessionist disputes.

These arrangements are often agreed at the 'substantive/comprehensive' agreement stage – that is, as part of an overall settlement framework, and in forms which are highly varied, which draw eclectically on existing models of state configuration – often adding layering and complexity as a result of negotiating dynamics.

Recommendations focused on inclusion

Territorial power-sharing can be difficult to agree, and can throw up new problems of exclusion and inclusion. The review of how peace agreements provide for territorial power-sharing, provides a basis for the following recommendations:

- Analysis on how to ensure that power-sharing arrangements enable inclusion beyond the main conflict parties should question the conflict dynamic which the territorial power-sharing attempts to address, and anticipate lines of resistance.

For example, identifying whether negotiations are attempting to pull a fragmented state back together, or further decentralize a federal state to demobilize a geographically concentrated minority, will have implications for which party is more likely to embrace or push against, a territorial power-sharing 'solution'.

- Symbolic naming of the arrangements may be as contested as substance, and require creative approaches to 'naming'.

The multiple meanings associated with terminology such as 'federalism', 'autonomy' and 'decentralization' can lead to parties favouring particular concepts due to what they understand those terms to mean, or rejecting proposals due to their terminology, regardless of the mode of devolution of power that they establish in practice. Opening up space in the process for a diverse range of parties to express how they understand concepts of territorial power sharing, may reduce the opportunities for misinterpretation or disappointment.

- ▶ Sequencing territorial devolution of power in stages, to build incremental agreement, can help build support for territorial power-sharing as a framework for a more inclusive state.

In some peace processes, comprehensive territorial power-sharing frameworks build on earlier peace plans or rhetorical commitments to power-sharing principles, even if these earlier proposals failed to be implemented. These processes raise the possible importance of having certain concepts agreed in principle at the outset of negotiations.

- ▶ Creative techniques for formalizing 'unsettlement' may present opportunities to promote plurinational solutions to statehood.

These techniques can serve to reassure conflicted groups that they will not lose out by entering the new arrangements. Creative techniques include:

- ▶ Providing for extra territorial connections between kin groups
- ▶ Leaving unresolved border areas
- ▶ Providing for open-ended unresolved processes, such as by using postponed referendums

Part I:

Understanding territorial power sharing and inclusion in peace processes

What is territorial power sharing?

Territorial power sharing can be understood as the sharing and delegation of the central government's powers and responsibilities to geographical units. It can include restructuring from a centralised to a federal state, or moving decision-making power from a central government to regional or local governments. It can also include delegation of forms of political, fiscal, or administrative self-governance to regional or local groups who make claims to govern a particular area of territory.

In deeply divided societies experiencing conflict, territorial power sharing is often understood to provide a form of group accommodation – particularly in societies fragmented along ethnic, national, religious, linguistic, or cultural markers (Lustick, 1979). It is frequently suggested as an option for state re-design in states experiencing conflict fought along such identity cleavages, when majority and minority groups are territorially concentrated. Territorial control and group identity are often intrinsically linked in ways that territorial power-sharing acknowledges. Further, territorial power-sharing acknowledges that different groups have diverging ideas as to the legitimacy of the state and its government, and are contesting ownership of the same territory.

For these reasons, territorial power-sharing is often seen as a mode of compromise in secessionist conflicts. Rather than changing the international borders of the state, or endorsing the status quo, territorial power-sharing offers states and non-state actors a mechanism of compromise, although precisely because it is a compromise, the means of agreeing on and implementing territorial power-sharing can be fraught and prolonged. Although predominant in identity conflicts, conflicts to which questions of identity are less salient may also see non-state armed groups located only in particular regions or locales, reaching for a form of state-rebel accommodation, also turning to territorial power-sharing arrangements as a means of securing an end to conflict. Here territorial power-sharing can aim to accommodate competing ideologies and interests as to the future nature of the state.

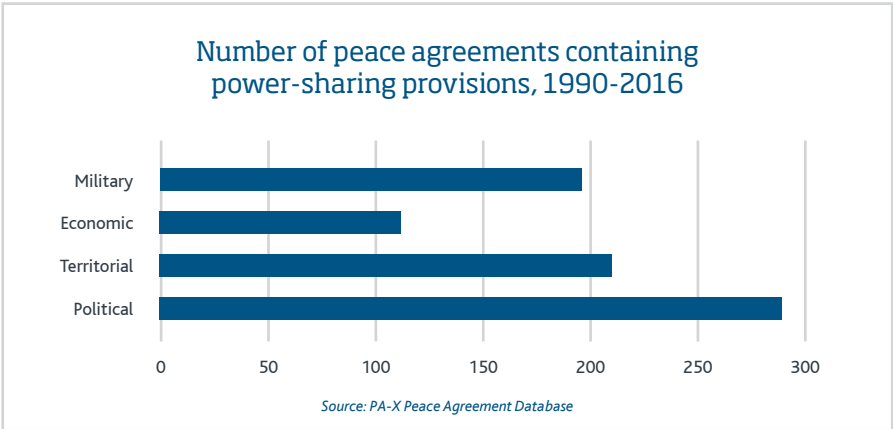
There are various different forms of territorial power sharing. Federalism, confederalism, autonomy, devolution, and decentralization all entail different approaches to territorial self-governance. In reality, many states use complex combinations of multi-level governance to share territorial power (see Norris, 2008: 157-185).

Degrees of power-sharing vary across different country-contexts, with different powers devolved and retained by the centre. The division of powers may pertain to just one part of a state, or across several territorial entities, depending on the context. In states where multiple entities have devolved powers, territorial power sharing can be symmetric, with each entity having the same powers devolved in the same way, or asymmetric with entities all having varying degrees of decision-making power over the same policy areas.

Terminology can be difficult to pin down, as in deeply divided societies, the choice of terminology can itself be highly contested. Different groups may associate different meanings and expectations to the same concept. For some, territorial autonomy offers self-governance and protection for minority groups; for others, it implies the fragmentation and break-up of the state.

Forms of territorial power-sharing

Territorial power sharing predominantly is part of proposals to reconfigure the state from its previous unitary (or other) structure, often responding to demands by ethnic or national groups that centralization or exclusion of certain groups must be addressed in order for them to demobilize.



Of the 1518 peace agreements signed between 1990 and 2016, 494 agreements contain provisions for political, territorial, economic and/or military power sharing, with the frequency of such provisions remaining steady over time. Within this power-sharing sub-set, 208 peace agreements contain references to territorial power-sharing.

The following are different forms of territorial power-sharing that have been agreed in peace processes to manage territorial-based conflict and diversity in deeply divided societies. It is important to re-emphasize that elements of all the options below are often used in complex combinations to address claims for territorial self-governance at multiple levels, or in separate parts of the country. They are also often combined with other forms of power-sharing (political, economic, and military), both at central and regional levels, in what is known as 'complex power-sharing' (Wolff, 2013).

It is also important to note, that there are different levels of formality as to how power can be devolved. Territorial power-sharing can be provided by a peace agreement or related peace process legal instruments (for example UN Security Council Resolutions, such as UNSCR 2275 (2016) for Somalia), but it can be formally institutionalized through a central state constitution, or through domestic legislation, or as a matter of administrative understanding.

Federal or similar forms of sub-divided government:

Division of the state into more than one sub-state territorial unit, with power devolved to regions, regional 'states' or provinces. This includes sub-state units whether they are termed as 'federal' states or not, and includes a framework in which the units have symmetric or asymmetric powers. The central government may retain reserved powers, with some powers devolved to the regional units. Key issues for the territorial sub-division of power include how to provide for self-rule (significant decision-making powers over areas of vital interest for groups) and how to provide for shared rule (mechanisms for groups to participate in decision making at the centre, often through a second chamber in the legislature) (Elazar, 1987). Peace agreements have established or revised federal systems in, for example, Bosnia and Herzegovina, Iraq, Nepal, and South Sudan. Other forms of decentralization include 'unions' (Comoros), regionalism (South Africa), and devolution (Northern Ireland).

Local or municipal government:

Devolution or decentralization of power to local or municipal districts, below the level of the regional government, in order to accommodate a group. This can include political, administrative, and fiscal powers. These provisions can provide for symmetrical changes or to specific local units. For example, the 2001 Ohrid Agreement for Macedonia provides for extensive decentralization to municipalities across the whole country, whilst the 2008 Doha Agreement for Lebanon, divides Beirut into three electoral districts, but does not divide districts in other parts of the country.

Autonomy:

Development of distinct autonomous zones or regions within a state, with the function of accommodating a group, with different powers to other parts of a centralized, federal or decentralized framework due to the extent of the autonomy granted. Peace agreements may revise or grant greater autonomy to existing autonomous regions. The special status province of Cabinda in Angola, Bougainville in Papua New Guinea, Aceh in Indonesia, and the Bangsamoro area in the Philippines are all examples of territories whose autonomous status was negotiated in peace processes.

What are the arguments for and against territorial power-sharing?

Proponents of territorial power-sharing argue that by sharing power between different territorial entities and levels of government, groups which have been fighting for territorial control or have grievances which have a territorial basis (for example, lack of access to natural resources) can have their demands met. Where these groups seek not accommodation within the state, but secession from the state, then territorial power-sharing can be used to address some of the interests underlying the push for secession without departing from the existing state boundaries.

FOR	AGAINST
Meets minority demands for territorial self-governance without ceding sovereignty	Can empower local majorities to discriminate against local minorities
Grants groups degrees of control over issues important to them	May contribute to the collapse of states with a 'core ethnic region'
Can improve access to decision making for territorially disparate communities	Risks destabilizing post-conflict democracies

For non-state actors, this may be an acceptable option. Achieving statehood and international recognition is difficult and not all entities will be of sufficient size and resources to be able to operate effectively as a state. Furthermore, not all mobilizing minorities may wish to achieve full secession, or have the capacity to govern a fully independent state, and may be primarily campaigning to have their territorially-based grievances and claims acknowledged or remedied through greater degrees of self-governance. For example, one of the drivers of the 1989-1998 secessionist conflict in Bougainville, Papua New Guinea, was indigenous opposition to the conduct of copper mining in the area, and the current autonomy arrangements reflect this desire for control over issues pertaining to one particular part of the country¹.

From a state-centric perspective, territorial power-sharing protects the state against secession: non-state group demands for greater autonomy can be met without relinquishing sovereignty or changing inter-state borders. Due to the international norm of maintaining state-sovereign borders, territorial power-sharing may be more attractive to international mediators and state parties in peace processes, rather than recognizing secessionist independence (Caspersen, 2017: 33).

Another argument made by proponents of territorial power-sharing, particularly forms which decentralize powers to municipal or local governments, is that it can improve access to public services, and thus address grievances of inequality between groups. By bringing decision-making 'closer' to the communities affected, proponents suggest that this can promote improved efficiency and greater democratic accountability.

For sceptics, territorial power sharing is subject to a variety of conditions which, in some cases, can actually contribute to, rather than manage, conflict in divided societies.

¹ For more on the relationship between territorial power-sharing and economic resources, see the PA-X Economic Power-sharing research report, and for the postponed referendum on independence in Bougainville see section of this report on Open-ended processes.

Some scholars argue that instead of including minorities into governance, territorial power sharing can:

- ▶ empower local majorities to discriminate against local minorities (Kymlicka, 1995)
- ▶ embolden groups to break away from the state by weakening the state's sovereignty (Snyder, 2000)
- ▶ contribute to the collapse of states with a 'core ethnic region' (Hale, 2004)
- ▶ increase the strength of regional parties, therefore facilitating those who wish to secede (Brancati, 2008)
- ▶ destabilize post-conflict democracy (Graham, Miller and Strøm, 2017)
- ▶ mobilize non-territorially concentrated groups (Tranchant, 2007)
- ▶ or mobilize and radicalize other territorially concentrated minorities whose claims have not been similarly met. For example, governments in Papua New Guinea and Indonesia were concerned during peace processes in Bougainville and Aceh respectively, that conceding autonomy would encourage other island communities with discontents to escalate their claims

Territorial power-sharing can also increase levels of corruption. Whilst territorial power sharing can be seen as a way to bring accountability to the local level, some critics argue that issues such as cronyism and corruption simply continue or are even enabled throughout regional institutions, which provide greater opportunities for local, sometimes less accountable, elites to wield power (see further, Haaß and Ottman, 2015, and the PA-X Economic Power-sharing Research Report for more on power-sharing and corruption.)

Even sceptics acknowledge, however, that contextual conditions and variables affect whether any of these risks happens. In addition to these risks, territorial power-sharing may be merely ineffective in addressing conflict. Whilst devolving power territorially to minority groups can address some of their demands, the state will still maintain sovereignty over the contested area, and in practice can control whether the movement of power away from the centre is actually implemented.

Part II:

What are the critical decisions relevant to inclusion in territorial power-sharing?

How will territory be divided?

A key decision for parties and mediators is how territory will be divided to accommodate identity groups. Peace agreements often create or reform existing sub-state entities, and reflect the following choices: do indigenous groups claim ancestral homelands that boundaries can correspond to, such as the proposed Bangsamoro Autonomous Region in the Philippines? Will parties agree to reflect the territorial distribution of groups along conflict lines at the point of a final ceasefire agreement, such as the Republika Srpska in Bosnia and Herzegovina? Or will pre-conflict units of governance which have been granted new or reformed powers? The following provision creates a Bodoland Autonomous Council in the Indian federal state of Assam:

'There shall be formed, by an Act of Assam Legislative Assembly, a Bodoland Autonomous Council (BAC) within the State of Assam comprising contiguous geographical areas between river Sankosh and Mazbat/river Pasnoi. The land records authority of the State will scrutinize the list of villages furnished by ABSU /BP AC having 50% and more of tribal population which shall be included in the BAC. For the purpose of providing a contiguous area, even the villages having less than 50% tribal population shall be included.'

India/ Assam, Memorandum of Settlement (Bodo Accord), 20 February 1993, 3. (a).

What will be the process for internal boundary demarcation?

When parties agree to create sub-state territorial entities, a potentially contentious and prolonged part of the negotiations can focus on how the geographic boundaries of regional or local entities are agreed, or how parties and external arbiters may delineate territorial boundaries. Key choices can involve whether to establish boundary commissions or criteria under which to propose new sub-state entity boundaries. In the case of Mindanao, the Joint Statement from the 12th round of exploratory talks between the Government of the Philippines and the Moro Islamic Liberation Front reports that: 'The Panels achieved significant progress in defining the concept, sharing the resources and establishing governance in the BJE but were held back from reaching full consensus by the highly technical nature of discussions on the delineation and demarcation of territory.'

The following example from the Bosnia and Herzegovina peace process demonstrates the type of criteria which parties agreed on to demarcate sub-state entities boundaries, and how prolonged these processes can be:

Case Study: Bosnia and Herzegovina

The 1994 Washington Agreement is often heralded as ending the conflict between the Bosnian government and the Croatian Community of Herzeg Bosna, by establishing the Federation of Bosnia and Herzegovina (FBiH). It established a Federation in the areas of the Republic of Bosnia and Herzegovina with majority Bosniak and Croat populations, and outlined a proposed confederation with the neighbouring state of Croatia. However, this agreement was part of a multi-layered peace process formed of local ceasefire and humanitarian deals to build confidence between parties, and multiple implementation agreements where the details of territorial power-sharing were further negotiated.

The FBiH was divided into cantons and municipalities, and shared powers between the central and cantonal governments, with the option of delegating powers to municipalities. The Washington agreement was the outcome of an intensive negotiation process at international and local talks, over where exactly the internal boundaries for each entity would be located, with both parties keen not to lose control of territory gained during the conflict. The Vienna Agreements, signed from the 8th to 11th May 1994, contain the agreed criteria for determining the territory of the FBiH, and the principles of the formation of cantons. This included: using the 1991 (pre-war) census to identify municipalities with majority Bosniak and Croat populations; excluding areas with a majority Serbian population; land corridors to include majority Bosniak and Croat territories not close to the main Federation area; principles of ethnicity, economy, geography and communications; special status for municipalities which do not have the same majority population as the canton it is located in; and establishing a mixed parliamentary commission of Bosniak and Croat representatives to marker the borders in accordance with the agreed criteria. Negotiations relating to the structure of the FBiH, including implementing political and military power-sharing mechanisms, continued both prior to, and after the 1995 Dayton Peace Agreement was signed.

What will be the institutional framework for sub-state entities?

When peace processes create regional or local entities to accommodate groups, parties will need to discuss how to establish or reform political institutions at multiple levels of the state. Such institutions can include a second chamber at the central level, federal state-level or regional legislatures and executives, municipal assemblies, local councils, and inter-entity associations. The following provision details the proposed institutional framework for the contested Azawad region in Northern Mali:

'The Parties shall put in place an institutional architecture enabling the populations of the North to manage their own affairs in a spirit of participative citizenship, based on the principle of free administration and enabling wider representation of these populations within national institutions. To this end, the following provisions shall be made: **At the local level** - a Regional Assembly shall be set up in the Region elected by direct universal suffrage, to which a large number of competences shall be transferred, as well as resources and appropriate judicial, administrative and financial powers;... **At the national level** - the process of setting up a second chamber of Parliament known as a Senate, National Council or any other name which emphasizes its nature and role, shall be reactivated and speeded up; it shall be developed as an institution whose remit and composition support the objectives of the present Agreement;...'

Mali/ Azawad, Accord Pour la Paix et la Reconciliation au Mali - Issu du Processus d'Alger, 20 June 2015, Section II: Political and Institutional Questions, Chapter 3: Institutional framework and territorial reorganisation, Article 6.

How will responsibilities be divided between different levels of governance?

Another critical decision can be to consider how powers will be allocated to different levels of governance, and how responsibilities will be divided between the central government and newly created regions. Outcomes of these negotiations may take the form of explicit lists, where areas of governance are explicitly parcelled-out, or proposed mechanisms for relevant competencies that could emerge in the future, but are unknown at the time of agreement. The 2005 Interim Constitution of Sudan, Schedule (C) Powers of States, lists forty-five exclusive executive and legislative powers of a state of the Sudan, many of which are subject to compliance with the National Constitution or national strategies and competencies. These powers include the constitution, policing, local government, social welfare, the state judiciary, and administrative and fiscal matters. Schedule (D) Concurrent Powers, then lists thirty-two concurrent legislative and executive competencies of the National Government, the Government of Southern Sudan and state governments, which include economic development in Southern Sudan, education, health policy, and trade.

These provisions are often accompanied by discussions to decide on the level of jurisdiction for different types of powers, such as reserved, concurrent or joint, and exclusive. Explicitly defining the legal nature of certain powers can assist dispute resolution mechanisms such as commissions or constitutional courts, if the nature of agreed autonomy becomes contested during implementation. This can include provisions that prevent the central government from withdrawing or suspending powers of sub-state institutions. The following provision defines the different powers shared between the Philippines and the Bangsamoro governments:

“**Reserved powers**” are powers or matters over which authority and jurisdiction are retained by the Central Government. “**Concurrent powers**” shall refer to the shared powers between the Central Government and the Bangsamoro Government, as contained in this Annex and as shall be further provided in the Bangsamoro Basic Law. “**Exclusive powers**” shall refer to the powers or matter over which authority and jurisdiction pertain to the Bangsamoro Government.’

Philippines/ Mindanao, Annex on Power-Sharing to the Framework Agreement on the Bangsamoro (FAB), 8 December 2013.

How will disputes between the central and other levels of government be resolved?

Once parties have agreed to territorial power-sharing, parties and mediators will need to consider what mechanisms can be used to govern any disputes, which emerge regarding the application of the agreed territorial power-sharing, including division of powers, or changes through to the boundaries of a sub-state entity. These mechanisms are particularly important as they provide guarantees to parties that the central government cannot remove or suspend promised powers, whilst providing a platform for the central government to peacefully challenge regional governments if their use of powers does not comply with the agreed terms. Dispute mechanisms can include establishing special supervisory bodies or commissions, ongoing political negotiation, and/or the use of constitutional and supreme courts, as agreed in the following provision:

'The Constitutional Court shall rule on the constitutionality of the statutes of the Union and the islands. [...] The Constitutional Court shall guarantee the distribution of powers between the Union and the islands. It shall be competent to rule on the conflicts of jurisdiction between two or several institutions of the Union, between the Union and the islands, and among the islands themselves...'

Comoros/ Anjouan, Comoros's Constitution of 2001, 23 December 2001, Title IV: The Constitutional Court, Article 30.

Will the arrangements be placed in a new articulation of the nature of the state?

As territorial power-sharing can involve dramatic restructuring of the state's institutional frameworks, parties may need to decide whether to acknowledge the reasons for splitting power in this way, and whether a new vision of the state's new conception of its diversity and arrangements will be articulated in either the peace agreements, or in any new or revised constitution. These rhetorical statements often acknowledge the role that centralization has played in excluding certain groups or sectors of society, and suggest that territorial power-sharing can address this, and can be symbolically important in addressing historic grievances and articulating a new conception of the state. Statements of a new, more inclusive nature of the state can also keep the promise of territorial power-sharing on the table, even if parties are struggling to agree over the specifics of the arrangement. They are, however, the weakest form of power-sharing provisions in peace agreements. The following extract from an agreement in Nepal demonstrates the type of language used to include federal principles as a form of redress:

'In the spirit of the movements of the Limbuwan, Khumbuwan, Tamangsaling, Tharuhat Dalits, and women; ending all forms of discrimination that evolved over a period of 239 years due to the centralized feudal state against the aspirations of Adivasi Janajati, Madheshis, Dalits, women, backward groups, minorities and Muslim communities, we, the signatories, have reached the following written agreement, expressing commitment to build a peaceful, prosperous and modern new Nepal, incorporating all Nepalese people, including Adivasi Janajati, Madheshis, Dalits and women into the national mainstream, by establishing a federal democratic republic based on a new state structure as per the [principles] of a federal system with proportional democracy and autonomous federal states.'

Nepal, Agreement between the Government Talks Team comprising the Seven political Parties and Sanghiya Ganatantrik Rastriya Morcha, 2 March 2008.

How will any new 'minority-majority' dynamics be anticipated and provided for?

As drawing new sub-state boundaries will invariably create new minorities and majorities, a critical decision will be how to anticipate and address these dynamics, and whether other mechanisms will need to be built-in to institutional frameworks to promote minority inclusion (see further Political Power-sharing Research Report). Considering the new minority-majority dynamics is particularly important when new regional or local entities are created to accommodate mobilized minorities, but may then risk marginalizing non-aligned minorities (groups that were not party to the conflict) and other non-dominant groups who do not identify as members of the titular community of the sub-state entity (Schou, 2012).

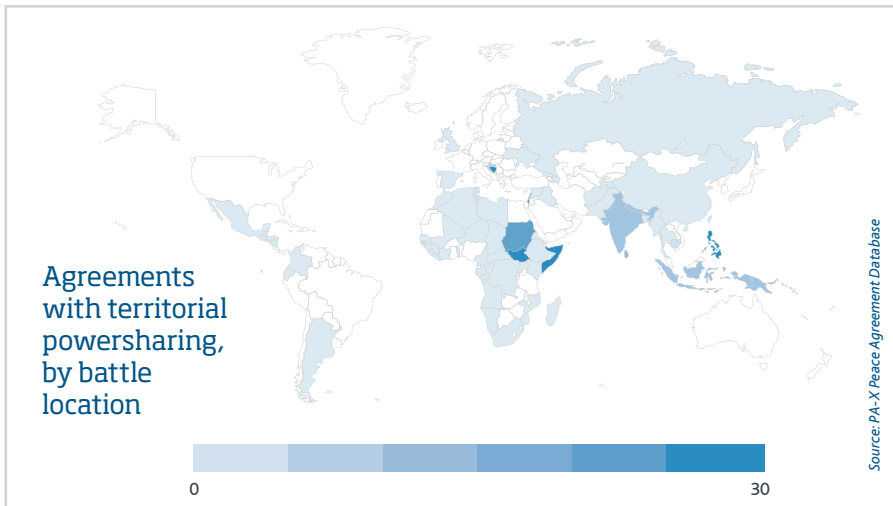
Choices that various peace processes have needed to consider in order to navigate possible new forms of exclusion include: will territorial power-sharing be combined with sub-state political power-sharing, as an avenue for non-dominant minorities to participate in regional and local institutions? Will equality and non-discrimination guarantees apply to all citizens across all levels of the state? How is the nature and composition of an entity articulated in its sub-state constitution? Sometimes these discussions can focus only on aligned minorities that were party to the conflict to the exclusion of non-aligned minorities, or overemphasize the importance of ethnic or national identities over other forms of exclusion, such as gender or class (McCulloch, 2018).

While territorial power-sharing may be the most realistic option for responding to mobilized minorities, international actors and mediators should be wary of supporting territorial power-sharing solutions that only take dominant ethnic or national minorities into consideration, or without substantive, context specific mechanisms for non-dominant minority inclusion in regional institutions with stringent equality guarantees. This may leave the door open for future mobilization by other excluded groups.

When, where, and how is territorial power-sharing agreed?

1. Territorial power-sharing has been agreed in peace processes worldwide:

Territorial power-sharing provisions have been agreed most frequently in peace agreements in Asia, predominantly in the Philippines/Mindanao and northeast India conflicts, closely followed by Africa (excluding MENA), where Sudan, South Sudan, and Somalia, have a large number of territorial power-sharing arrangements. The majority of territorial power-sharing arrangements in Europe and Eurasia were agreed between various parties during the 1992-1995 conflicts in Bosnia, whilst agreements between Israel and Palestine comprise most of the territorial power-sharing deals in the MENA region. The region with the fewest peace agreements with territorial power-sharing provisions is the Americas, where Colombia has the most agreements that provide for decentralization. Parties, mediators and analysts have proposed territorial power-sharing as a possible solution in ongoing conflicts in Syria (Araabi, 2017) and Yemen (Salisbury, 2015), but as yet, none of these processes has culminated in an agreed peace settlement.



2. Territorial power-sharing is overwhelmingly agreed in processes relating to intrastate conflict:

The group accommodation function of territorial power-sharing means that it is overwhelmingly agreed in peace processes relating to intrastate conflict: of the 208 peace agreements containing territorial power-sharing provisions, 99% relate to intrastate conflicts. This concentration of provisions highlights how territorial power-sharing is understood to manage conflicts between groups within state boundaries, rather than as a mechanism to address inter-state conflicts. However, the territorial nature of some interstate conflicts (particularly between neighbouring states), shows that the use of forms of cross-border power-sharing to manage contested territories in inter-state conflicts can offer creative approaches to contested borders, such as in the 2000 Joint Declaration between North Korea and South Korea.

3. Territorial power-sharing is agreed predominantly in agreements which attempt to substantively resolve the conflict:

Territorial power-sharing provisions are most commonly agreed in agreements that set out a framework for substantively resolving conflict, especially when they refer to multiple issues. This suggests that territorial-power sharing is more likely to be on the table in negotiations addressing constitutional arrangements or comprehensive frameworks for resolving the conflict across the entire state, rather than piecemeal or temporary measures for specific parts of the country (such as localized ceasefire agreements). Agreements to substantively resolve conflict tend to include more detailed arrangements for territorial power-sharing are agreed (such as form and function of regional institutions), particularly where the peace agreement takes the form of a constitution. Where the agreement is a constitution, the agreed proposals for new sub-state entities and institutions are often presented to the legislature for ratification.

4. Territorial power-sharing often uses creative and multi-layered permutations for splitting and sharing power:

Most peace agreements that provide for territorial power-sharing do not provide clearly for one form or the other, such as a straightforward form of federalism. Instead, responding to the complexity of conflict, packages often include multiple forms of territorial power-sharing, such as establishing federal state structures with further decentralization to local governments within federal entities. Examples of such complex packages include the 2005 Naivasha Agreement in Sudan, and the 2005 Constitution of Iraq, both of which were agreements to provide frameworks for substantively resolving conflict, that include complex combinations of territorial jurisdiction. Territorial power-sharing is messy in practice, and granting forms of self-governance to ethnic or national groups is likely to be part of a complex package of decentralizing powers to a variety of regional or local entities, rather than implementing a purely symmetric federal system. Furthermore, peace processes may designate special territorial arrangements for areas where the parties cannot agree on how to incorporate it into the federal system: the special district of Brčko in Bosnia and Herzegovina, which is not part of either federal entity, is an example of this (see further Creative Options below).

Part III:

Choices and trade-offs in negotiating territorial power sharing

What are the difficulties in agreeing territorial power sharing?

There are several reasons why territorial power sharing can be difficult for parties in conflict to agree on during peace negotiations. The difficulties stem from the importance of contested territory to particular groups (Caspersen, 2017: 15), and the challenges of convincing parties to buy-in to a national political settlement once a state has violently fragmented and de facto lost control over parts of its sovereign territory. Although parties may have decided to split territorial power, they may continue to aspire to pursue a unitary state or secession, and this can make them wary of agreeing to what they perceive as a deal that will prevent their future aspiration being achieved.

For those concerned about state durability, there is a perception that although territorially dividing the state may satisfy group demands for autonomy in the short-term, it could eventually lead to the state breaking up, as sub-state groups further consolidate control over particular regions. This concern can make parties or even mediators wary of devising peace plans, which will strengthen regionally concentrated groups, and even reignite conflict in the future by acting as a stepping stone towards dismemberment of the state. Central government elites can also be reluctant to transfer certain (and sometimes any) powers to sub-state institutions, making it difficult for parties to agree on the degree of territorial power-sharing, even if they have accepted a territorial power-sharing settlement in principle. Even when parties successfully reach agreement over the nature and degree of autonomy, implementing the transfer of powers may be delayed, and require further agreements to renegotiate or arbitrate the devolution of power.

Conversely, once non-state actors have militarily gained control over territories, they can be reluctant to relinquish these gains by accepting the state's sovereignty over a breakaway entity, even if peace plans are proposing high degrees of autonomy. Third-party support for sustaining self-declared states or autonomous regions, both militarily and diplomatically, can further reinforce reluctance to relinquish territorial gains, as can be seen in the current conflict in Syria (Barnes-Dacey, 2017).

Finally, there can be principled objections to granting legitimacy to territories gained through violent conflict and ethnic cleansing, by granting them status as a regional entity under the control of the actors responsible for gross human rights violations. For parties and mediators of the Bosnian conflict from 1992-1995, this became an important sticking point for constitutional proposals that divided the state into entities, which demographically were a direct consequence of ethnic cleansing (see Anonymous, 1996 for a reflection on opposition to territorial power-sharing peace plans 'in quest for the perfect peace').

What are some of the creative options used to manage the challenges of inclusion in territorial power-sharing arrangements?

The following section discusses the various and creative ways that mediators have used to navigate the challenges raised by negotiating territorial power-sharing, when the above difficulties have emerged in peace processes.

Understanding the political dynamics of the inclusion goals of territorial reconfiguration

Whilst parties and mediators may look to 'successful' cases of federalism or decentralization to guide proposals, different contexts will require tailored negotiating strategies. Territorial power-sharing arrangements can have quite different rationales, depending on context. Identifying the type of settlement that parties are hoping to reach and its relationship to the way the conflict has implicated territory is important to anticipating and trying to work around lines of resistance.

For example:

- ▶ It can affect the parties' incentives, and the type of inclusion on offer whether negotiations are attempting to pull a fragmented state back together (such as Syria), or aiming to further decentralize the state to demobilize a geographically concentrated minority (such as with Adivasi regions in north-east India).
- ▶ In states that are already federal or decentralized, governments may be unwilling to agree to proposals that suggest autonomy arrangements that are outside of the existing federal framework, as this could signal to other territorially-concentrated minorities that conflict can achieve greater self-governance gains.

Responding to de-facto pre-existing regional entities

If conflict dynamics have already established de facto regional entities under the control of non-state actors, then sub-state actors may view re-incorporation within the state, even as a highly autonomous jurisdiction, as an unnecessary compromise. Examples of this challenge include the Southern Movement in Yemen, Puntland in Somalia, and the Croatian Community of Herzeg-Bosna in Bosnia and Herzegovina. These are all regions in which minority actors used ongoing conflict between the government and other non-state actors to call for greater autonomy for themselves, or established de facto breakaway regions, with parallel structures of governance.

Sub-state peace processes have been one way to respond to these concerns, as a way to settle territorially concentrated conflicts simultaneously to ongoing mediation attempts at the centre. Whilst not always completely separate processes (due to overlap of mediators, or results feeding into international and central negotiations), these processes acknowledge that minority claims need to be engaged with, or else may risk progress in reaching an overarching political settlement for the entire country. Local clan-based processes in Puntland, Somalia, have presented an opportunity to further establish Somalia as a federal state overall, as developments regarding its relationship to Mogadishu have served as an example for other member states' relations with the central government (Mosley 2015). The peace process relating to the Croatian Community of Herzeg-Bosna in Bosnia and Herzegovina focused on establishing a federal entity with multiple layers of territorial, political, and military power-sharing. Agreements relating to this process stated that this solution was not subject to whatever agreement was reached with other breakaway regions, and that any eventual structures would be integrated with other peace processes at a later date.

'1. Bosniacs and Croats, as constituent peoples (along with Others) and citizens of the Republic of Bosnia and Herzegovina, in the exercise of their sovereign rights, transform the internal structure of the territories with a majority of Bosniac and Croat population in the Republic of Bosnia and Herzegovina into a Federation, which is composed of federal units with equal rights and responsibilities.

2. Decisions on the constitutional status of the territories of the Republic of Bosnia and Herzegovina with a majority of Serb population shall be made in the course of negotiations toward a peaceful settlement and at the ICFY.'

Bosnia and Herzegovina/ Yugoslavia (former), Declaration Concerning the Constitution of the Federation of Bosnia and Herzegovina, 18 March 1994, I. Establishment of the Federation, Article I.

A risk with this approach is that establishing asymmetric territorial power-sharing along the internal borders of a previously secessionist region can be used as a precedent for future mobilization, with claims for self-governance deemed to have been legitimized by the peace process.

It is important to note that governments, their allies, and international coalitions have used force to dismantle breakaway regions and parallel governance structures, when negotiations have failed to bring them back into the fold. The proposed 'Zagreb Four' peace plan would have turned the breakaway Republic of Serbian Krajina in Croatia into a regional entity with high degrees of self-governance. When rebel leaders rejected the plan, the Croatian army (with the backing of the United States) launched Operations Storm and Flash to overrun the region and regain full control of the state's sovereign territory after four years of conflict.

Using symbolic terminology to creatively name processes

Often the name to be given the territorial arrangements is as – and on occasion more – difficult to reach agreement on, as the substance of the arrangements. The multiple associations with terms such as ‘federalism’, ‘autonomy’ and ‘decentralization’ can result in different parties favouring particular concepts due to the link to a future status it implies – such as equating autonomy with eventual independence – , and even to them rejecting proposals due to the decision to use one term over another. Some names for sub-state entities (for example Republika Srpska) have connotations of sovereignty, that central governments dislike; while terms such as ‘federalism’ are understood as claims to break-up the unitary nature of the state in other countries (this terminology is very contested by the majority community in Sri Lanka, and also raises concerns in Syria). The decision to name the territorial power sharing process or resulting arrangements can provoke emotive and entrenched discussions.

In some cases, dedicated parts of the peace process have been dedicated to discussing the choice of terminology relating to territory, such as in the Philippines/Mindanao process, in order to be clear that all parties understand what they are agreeing to, and ensuring there is space to consider what form of territorial power sharing is appropriate for the context. Conversely, implementing a decentralized body of cooperation between Serb-majority municipalities in Kosovo has been delayed in part due to competing legal interpretations of different names for the institution. The term ‘Association’ is preferred by the Kosovo government as this implies that the body will conform to the structure existing in Kosovo law, and in line with the existing competencies of the Association of Kosovo municipalities. The Serbian government, and local Serb representatives, however, refer to the body as a ‘Community’, which supports their interpretation that it should have greater degrees of autonomy than within the current framework for inter-municipality cooperation (Prelec, 2013). Due to this delay, and other political developments, Kosovo Serbs are currently taking steps to unilaterally establish this decentralized body.

Conceptual clarity, or opening up the process to allow representatives of minority groups (beyond aligned minorities or armed actors) to express how they understand concepts of territorial power sharing, may reduce the opportunities for misinterpretation or disappointment (Swisspeace, 2009); however, this may also prolong the length of time needed to reach a settlement.

Using sequencing to achieve incremental agreement

Tracing references to territorial power-sharing throughout peace processes suggests that in some cases, mediators of comprehensive territorial power-sharing frameworks build on early peace plans or principles, even where those earlier proposals failed to be implemented. This momentum is particularly interesting in processes where early rhetorical provisions for principles of group territorial autonomy fed into later, more-detailed arrangements in framework and constitution peace agreements, or in declarations of principles following failure of comprehensive agreements to stick.

The 1992 Carrington-Cutiliero Plan proposed at an early stage of the conflict in Bosnia, briefly proposed a state divided between three constituent units based on national principles, which would create territorial units for Bosniaks, Croats and Serbs within the state of Bosnia and Herzegovina. Despite several different ethno-national territorial solutions proposed in peace plans during the conflict, the 1995 Dayton Peace Agreement continued to reflect and institutionalize this initial view that any substantive framework should be rooted in a principle of territorial self-governance for the three largest ethno-national groups. In Mali, the 2014 Algiers Preliminary Platform and the Protocol D'Entente both contain rhetorical commitments to 'broad autonomy' and 'a new form of governance that will satisfy the deep aspirations and legitimate claims of the populations of the regions of northern Mali'. The detailed federal arrangements, institutional framework, and territorial reorganization provided by the 2015 Accord for Peace and Reconciliation in Mali, reflects these earlier commitments. These processes raise interesting questions about the possible importance of having certain concepts agreed in principle at the outset of negotiations, and the staying-power of specific conflict resolution 'options' on peace process agendas.

Techniques of 'formalized unsettlement' to promote plurinationalism

In some cases, creative approaches to managing territory and identity may involve trying to leave disagreement over the status of the territory open and unresolved, while creating workable common approach to how the territories within the state will be governed (Bell and Pospisil, 2017). Fluid articulations of sovereignty can enable parties to enter into an agreement that maintains the unity of the state in practice, but by leaving the state's final status unanswered, and instead providing creative mechanisms to ensure that formerly conflicted groups can live alongside each other in the meantime. In a sense these arrangements formalised 'unsettlement' of the territorial dispute rather than settling it. These creative mechanisms can include provision for:

- i. Extraterritorial connections between kin groups
 - ii. Unresolved border areas
 - iii. Open-ended processes
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- i. Extraterritorial connections between kin groups: This form of 'unsettlement', gives minority groups a solution which goes beyond traditional notions of sovereignty and territoriality, by providing guarantees of membership within other polities through the use of, for example, confederations with neighbouring states or dual citizenship rights. These types of arrangement can offer opportunities for inclusion and conflict management in cases where there are strong extraterritorial links between minority groups and neighbouring kin-states, or where there is no clear majority community.

In the case of Bosnia and Herzegovina, the confederation of Croatia and the Federation of Bosnia and Herzegovina (FBiH) established by the Washington Agreement in 1994, gave guarantees to the Croat minority that remaining with the Bosnian state borders would not limit their access to their neighbouring kin-state, theoretically reducing the risk of future secession. The 1995 Dayton Peace Agreement's provision for federal entities to maintain relationships with neighbouring states also offered minority groups the ability to foster kin-state ties without compromising their membership of the overarching state. Both of these provisions reflect the involvement of regional regimes in the 1992-1995 conflict, and address the complex relationships between groups, territory, and neighbouring states, in a way that pursuit of a more settled and resolved state nature might not be able to.

However, accepting this unsettlement may be unsatisfactory for those wishing to transition to a more majoritarian democratic system, as formalizing this type of unsettlement can make it enduring. Additionally, mechanisms which offer creative forms of extra-territorial citizenship may create an imbalance between those who qualify for dual passport regimes, and non-dominant minorities who are not considered a threat to the stability of the state, and therefore are not included in such strategies.

ii. **Unresolved border areas:**

Another form of postponing decision-making relates to delaying agreement on controversial parts of borders, as this allows mediators to propose creative ways of managing contested border spaces, so that parties do not have to agree to cede territory immediately. This creativity can be critical for territories that are positioned on internal borders where integration into one or the other sub-state entity, would be significant in terms of who held the balance of power in the resultant state.

At the Dayton negotiations for Bosnia and Herzegovina in 1995, parties agreed on the internal boundaries for dividing the country into two federal entities, but left decisions over the disputed Brčko area up to a binding arbitration process. This agreement meant that the thorny problem of which entity could claim this territory could not delay parties in coming to agreement on establishing the Inter-Entity Boundary Line between the Federation of Bosnia and Herzegovina and Republika Srpska. In contrast to the rest of the country, where all residents would be automatically allocated citizenship of the entity they resided in, residents of Brčko were able to choose which entity they wished to be a citizen of (see further, Stjepanović: 2015).

A similar approach was taken in the context of the disputed Abyei region between North and South Sudan. As part of the 2004 Comprehensive Peace Agreement between the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM-A), parties agreed that the disputed Abyei region on the border between northern and southern states would have a special administrative status for an interim period. Furthermore, residents of Abyei were agreed to be citizens of both Western Kordofan and Bahr el Ghazal states. The interim period was supposed to end with a referendum on Abyei's status to coincide simultaneously with an independence referendum for southern Sudan; however, Abyei is still contested between Sudan and South Sudan, and a UN Interim Security Force for Abyei (UNISFA) is currently operating within the region. Nonetheless, the arrangements demonstrate the ways in which some elements of the territorial configuration can be left more open than others, in-effect staging agreement.

iii. Open-ended processes:

Whilst some peace agreements attempt to formalize the detail and design of territorial power sharing mechanisms, others simply agree in principle that parties will work towards further autonomy or decentralization in the future, but leave the intricacies to be worked out in future negotiations or legislative processes.

A form of open-endedness for territorial power-sharing processes is sometimes created by providing for postponed referenda on the status of autonomous or contested regions. In these instances, parties agree to hold a referendum on the area's status at an agreed later date, in order to reduce levels of violence and explore the possibility of maintaining unity (Caspersen, 2017: 34), such as in South Sudan, where the 2005 Naivasha agreement required parties to use the interim period to develop a unitary conception of Sudan that voters would appeal to voters (Part B: the Transition Process, 2.4.2). Although there is always the risk that regions will vote to secede, this gives parties and mediators a form of breathing space to explore alternative proposals, when other approaches have failed. The postponed referenda on the status of the island of Bougainville, Papua New Guinea, is another example of this strategy, where the parties to a peace agreement agreed on a broad time period to hold the referendum in, with a specific date contingent on parties implementing the weapons disposal plan:

'The agreement provides for the right, guaranteed in the National Constitution, for a referendum among Bougainvilleans' on Bougainville's future political status. The choices available in the referendum will include a separate independence for Bougainville. The referendum will be held no sooner than ten years, and in any case no later than fifteen years, after the election of the autonomous Bougainville Government. The actual date of the referendum will be set taking account of standards of good governance and the implementation of the weapons disposal plan. The outcome of the referendum will be subject to ratification (final decision making authority) of the National Parliament.'

Papua New Guinea/ Bougainville, Bougainville Peace Agreement, 30 August 2001, 2. Referendum

Temporary autonomy under international transitional administration can be also be a way to facilitate an open-ended process. An example of this is the 12 month UN Transitional Administration for the areas of Eastern Slavonia, Baranja and Western Sirmium (UNTAES), formed by the Basic Principles and Erdut agreements for Croatia in 1995. The administration was envisioned to end with internationally-facilitated elections for all local governance bodies, although the mandate was extended several times via UN Security Council resolutions. After a transition to a UN policing support mission, the transitional administration ended in 1998, when the Republic of Croatia regained sovereignty over the region. International transitional administrations have often used further staged devolution of power from international actors to local participants, using provision for a government of national unity or other forms of decentralization.

Use of 'constructive ambiguity' may make it harder for disputes over terminology or degrees of autonomy to delay reaching a broader comprehensive settlement, or it could promote a future and more participative process beyond the confines of military elites at the peace table. However, leaving the details for later can also make it harder to implement self-governance reforms, as it may be difficult for minority communities to scrutinize details left out of a comprehensive agreement, and disputes regarding constitutional design may be made more intractable without an agreed reference document. If open-ended processes are considered, building into comprehensive peace agreements a clear path and timeline for reaching key decisions and appropriate oversight and implementation mechanisms may help to ensure that minority group accommodation is not left to stagnate once hostilities have ceased.

Conclusion

Territorial power sharing, in theory, offers the opportunity to reach political settlements that foster greater inclusion of social groups, particularly ethnic or national minorities and indigenous peoples. In practice, however, this approach entails complex sets of institutions and principles, which in themselves can become contested and difficult to implement. Our data suggests that different contexts will provoke unique narratives from differently placed groups, regarding the capacity for territorial power sharing to diffuse or accelerate further conflict during settlement negotiations, and that these narratives can shape the choices that parties and mediators make during peace processes.

Whilst devolution of power to a sub-state entity may be intended to be the primary mechanism for promoting inclusion of minority groups, there are aspects of territorial power sharing which could potentially be used to push for greater inclusion of women or non-aligned minorities within these settlements, when combined with other forms of power sharing at different levels of governance (see further Political Power-sharing Research Report). Territorial power-sharing arrangements also create their own inclusion and exclusion dilemmas at multiple levels of governance, and non-dominant minorities and women need to be resourced to engage with proposals and anticipate their consequences when territorial power-sharing is raised in peace processes. For a more detailed discussion of the strategies that women and non-dominant minorities can use to push for more inclusive territorial power sharing settlements, see the accompanying PA-X/UN Women Research Briefing: Women and Territorial Power Sharing.

Peace Agreements Referred to in Text

Bosnia and Herzegovina/ Yugoslavia (former), Statement of Principles for New Constitutional Arrangements for Bosnia and Herzegovina (Carrington-Cutiliero Plan of March), 18 March 1992.

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Bosnia and Herzegovina/ Yugoslavia (former), Vienna Agreements, 11 May 1994.

<https://www.peaceagreements.org/view/1873/>

Bosnia and Herzegovina/ Yugoslavia (former), Framework Agreement for the Federation (Washington Agreement or Contact Group Plan), 1 March 1994.

<https://www.peaceagreements.org/view/608/>

Bosnia and Herzegovina/ Yugoslavia (former), Declaration Concerning the Constitution of the Federation of Bosnia and Herzegovina, 18 March 1994.

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Bosnia and Herzegovina/ Yugoslavia (former), General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement), 21 November 1995.

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Comoros/ Anjouan, Comoros's Constitution of 2001, 23 December 2001.

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Croatia/ Yugoslavia (former), Guiding Basic Principles for Negotiations on a Settlement of Eastern Slavonia, Baranja and Western Sirmium, 3 October 1995.

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Papua New Guinea/ Bougainville, Bougainville Peace Agreement, 30 August 2001.

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Philippines/ Mindanao, Annex on Power-Sharing to the Framework Agreement on the Bangsamoro (FAB), 8 December 2013.

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Philippines/ Mindanao, Joint Statement from the 12th round of exploratory talks between the Government of the Philippines and the Moro Islamic Liberation Front, 4 May 2006.

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South Sudan/ Sudan, IGAD Declaration of Principles, 20 May 1994.

<https://www.peaceagreements.org/view/918/>

South Sudan/ Sudan, Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Army/Sudan People's Liberation Movement (Naivasha Agreement), 9 January 2005.

<https://www.peaceagreements.org/view/337/>

Sudan/ South Sudan, Interim National Constitution of the Republic of Sudan, 6th July 2005.

<https://www.peaceagreements.org/view/1800/>

Resources

The following are core resources for thinking about territorial power-sharing and peace processes. For wider literature, see further references.

Peace Agreements

For full text of peace agreements cited from which data in this report is drawn, and searchable provisions on territorial power-sharing see: PA-X Peace Agreements Database, University of Edinburgh (www.peaceagreements.org). This database is a repository of peace agreements from 1990 to date, current until 1 January 2016. It contains over 1500 agreements from over 140 processes with coding provisions for 225 substantive categories.

For peace agreement texts with search functions see further:

- ▶ **Language of Peace, University of Cambridge**
(<https://www.languageofpeace.org/#/>)
This tool provides access to over 1000 agreements for mediators and drafters to be able to compare and collate language on key issues.
- ▶ **Peace Agreements Digital Collection, United States Institute for Peace**
(<https://www.usip.org/publications/2009/04/peace-agreements-digital-collection>)
This collection strives to contain the full-text agreements signed by the major contending parties ending inter and intra-state conflicts worldwide since 1989. It was last updated in 2009.
- ▶ **Peacemaker, United Nations**
(<http://peacemaker.un.org/>)
Peacemaker maintains a comprehensive database of agreement texts, and it serves as an online mediation support tool.

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